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Regulations Governing Grazing On Lands Administered By the Forest Service

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**FOREST SERVICE
U.S. DEPARTMENT OF AGRICULTURE**

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INTRODUCTION

The Secretary of Agriculture has authority to permit, regulate or prohibit livestock grazing on all lands administered by the Forest Service. This authority has been conferred on the Secretary by the act of June 4, 1897 (30 Stat. 35), the act of April 24, 1950 (64 Stat. 82), and title III of the Bankhead-Jones Farm Tenant Act (50 Stat. 525). Under regulations promulgated by the Secretary, the Forest Service allows use of the national forest ranges for grazing purposes, properly coordinated with other uses such as timber production, watershed protection, recreation, and wildlife.

This booklet contains the regulations governing grazing of livestock on the National Forests, National Grasslands, and Land Utilization Projects. These regulations are also published in the Code of Federal Regulations, Title 36, Parks, Forests and Memorials, in Parts 211, 231, and 261.

Forest supervisors have been delegated authority to approve and issue grazing permits, and to control the grazing use on the national forests in accordance with the regulations. District forest rangers are directly responsible for the administration and management of livestock grazing on the ranger districts. Information regarding the interpretation of the regulations and the policies and instructions governing their application at the local levels can be obtained through the forest supervisors or district forest rangers.

GRAZING USE

Secretary's Regulation G-1: Grazing Authorizations (36 CFR 231.1). The Chief of the Forest Service is hereby authorized—

(a) To permit the grazing of such numbers and kinds of livestock upon the national forests or additions thereto as in his judgment is in the public interest.

(b) To refuse renewals of grazing permits in whole or in part where, in his judgment, continued grazing is not in the public interest.

(c) To prescribe the conditions and requirements under which permits will be issued or terminated.

MANAGEMENT OF RANGES

Secretary's Regulation G-2: Management of Ranges and Handling of Livestock (36 CFR 231.2).

(a) Under the general direction of the Chief of the Forest Service, the forests will be divided into range allotments, the kind and number of livestock to be grazed in each allotment determined, grazing periods established, the entrance of livestock regulated, range allocated among permittees, and efficient methods of range use developed and applied with the intent of obtaining the most equitable and profitable utilization of the forage consistent with its sustained productivity and with the protection of the forest and other related interests.

(b) Forest officers shall require methods of handling livestock on the national forests designed to secure proper protection of the re-

sources thereon and dependent interests, and may require the owners of livestock to give good and sufficient bond to insure payment for all damage sustained by the Government through violation of the regulations or the terms of the permit.

GRAZING PERMIT SYSTEM

Secretary's Regulation G-3: Applications and Permits (36 CFR 231.3).

(a) Unless otherwise authorized by the Chief of the Forest Service, every person must submit an application and obtain a permit before his livestock can be allowed to graze on national-forest lands or other lands administered in connection therewith. Water rights obtained under State law on such lands will not be recognized as giving the recipient thereof any right to use such lands in connection therewith or to enjoy the benefits thereof.¹ The grazing regulations shall be considered a part of every permit.

(b) The Chief of the Forest Service in regulating grazing on the national forests and other lands administered by him in connection therewith may authorize the issuance of permits for the grazing of livestock for periods not exceeding 10 years and renewals thereof as authorized by section 19 of the act of April 24, 1950 (64 Stat. 88, 16 U.S.C. 580 1), under the following terms and conditions:

(1) Paid permits may be issued to:

(i) Persons who own both the livestock to be grazed and commensurate property, and who otherwise qualify for the use of the range. Such permits, where covered by preferences, are renewable, and shall be called preference permits.

(ii) Persons who do not possess any or all of the qualifications listed in subdivision (i) of this subparagraph and where surplus range exists. Such permits do not involve preferences, shall be called temporary permits, and shall not be issued for more than one year at a time.

(2) Free permits may be issued to:

(i) Bona fide residents on ranch and agricultural lands within or contiguous to a national forest for not to exceed ten head of milk, work, or other animals owned for domestic purposes and whose products are consumed or whose services are used directly by the family of the resident, where there is a distinct need for forest range to support such animals.

(ii) Prospectors, campers, and travelers, for the few head of livestock actually in use during the period of occupancy.

(iii) Others as may be authorized by the Chief of the Forest Service.

(3) On-and-off permits may be issued to persons owning livestock which will graze on range, only part of which is national-forest land or other lands administered in connection therewith, for such proportion of their livestock as the circumstances appear to justify, but such persons may be required so to herd or handle their livestock as to prevent trespassing by that portion for which a permit is not granted.

(4) Private-land permits, free of charge, may be issued to persons who own or control usable lands, located either inside or outside a national forest, and who agree that the United States shall have exclusive possession of such lands for the full calendar year, in exchange for grazing privileges for the number of livestock which such lands will support, either upon lands, upon other lands in the

¹ (24 F.R. 2730, Apr. 9, 1959.)

possession of the United States, or upon such national-forest or other lands administered in connection therewith, except that no such permit may be issued where the exchange will be disadvantageous to the Government.

(5) Crossing permits, either free or on a charge basis, may be issued to persons wishing to drive livestock across any portion of a national forest or other lands administered in connection therewith for any purpose.

(6) Permits, either free or on a charge basis, may be issued to persons conducting permitted or commercial operations on national-forest lands or other lands administered in connection therewith for livestock actually needed in connection with such operations.

All existing permits for grazing on national-forest lands and other lands administered in connection therewith which are continued in force after the date of this section shall be treated as having been issued under section 19 of the act of April 24, 1950 (64 Stat. 88, 16 U.S.C. 5801), and this section (Reg. G-3).

GRAZING PREFERENCES

Secretary's Regulation G-4: Grazing Preferences (36 C.F.R. 231.4).

(a) The Chief of the Forest Service is hereby authorized to prescribe the conditions under which grazing preferences in the use of national-forest range may be established and recognized, including:

(1) Establishment of base property and livestock-ownership standards required of grazing-preference holders.

(2) Waiver and transfer of grazing preferences in connection with change of ownership of base property or permitted livestock.

(3) Approval of nonuse of grazing preferences for specified periods.

(4) Establishment of upper limits, for each national forest or portion thereof, governing size of grazing preferences.

(b) A grazing preference is not a property right. Preferences in the use of national-forest range are approved for the exclusive use and benefit of the persons to whom allowed.

(18 F.R. 8644, Dec. 23, 1953.)

GRAZING FEES

Secretary's Regulation G-5, Fees, Payments, and Refunds (36 C.F.R. 231.5).

A fee will be charged for the grazing of all livestock on national forests, except as provided by regulation or unless otherwise authorized by the Secretary of Agriculture or the Chief of the Forest Service.

Under such system as the Chief of the Forest Service finds to be proper, he is authorized to determine the fair compensation to be charged for the grazing of livestock on the national forests. The basic grazing fees thus established may be adjusted annually with relation to the market prices of livestock and will apply to all livestock use with the above-stated and the following exceptions:

(1) An additional charge of 2 cents per head will be made for sheep or goats which are allowed to enter the national forests for the purpose of lambing or kidding, unless the animals are lambed

or kidded under pasture conditions where drop herds are not a part of the lambing or kidding practice.

(2) A special charge may be made for pack and saddle animals used for commercial purposes and allowed to graze on national forests.

(3) No charge will be made for animals under 6 months of age at the time of entering the national forest, which are the natural increase of the livestock upon which fees are paid or for those born during the season for which the permit is allowed; providing, that the full fee may be charged for all weaned calves and colts regardless of age.

All grazing fees are payable in advance of the opening date of the grazing period unless otherwise authorized by the Chief of the Forest Service. Crossing fees are payable in advance of entering the national forest. Failure to comply with the provisions of this regulation will be sufficient cause for denying a grazing or crossing permit.

When a permittee is prevented from using the national forest range by circumstances over which he has no control or for some justifiable cause does not use the privilege granted him, in the discretion of the regional forester a refund of the fees paid will be made in whole or in part as the circumstances may justify and the Government's interests will permit.

(30 Stat. 35, 16 U.S.C. 551; 33 Stat. 628, 16 U.S.C. 472; A.O. April 19, 1940, 5 F.R. 1468.)

REVOCATION OF GRAZING PREFERENCES

Secretary's Regulation G-6: Revocations (36 C.F.R. 231.6).

The Chief of the Forest Service may authorize the revocation of grazing permits or preferences in whole or in part for a clearly established violation of the terms of the permit, the regulations upon which it is based, or the instructions of forest officers issued thereunder.

COOPERATION—AUTHORITY UNDER REGULATION G-7

Secretary's Regulation G-7: Cooperation With Stockmen (36 C.F.R. 231.7).

In order to obtain a collective expression of the views and recommendations of national-forest grazing permittees concerning the management and administration of national-forest lands and to encourage maximum participation by the permittees in actual management of the range where not provided for by Regulation G-10, or where the majority of the permittees elect to form an advisory board under Regulation G-7 in preference to Regulation G-10, the Chief of the Forest Service will provide for recognition of and cooperation with various groups of permittees as follows:

- (a) Local livestock associations with advisory boards, representing the range users of a national forest or subdivision thereof;
- (b) Advisory boards without associations, representing the range users of a national forest or subdivision thereof; and
- (c) Advisory boards representing the range users of a group of national forests.

The recognition of permittee livestock associations and advisory boards shall be under the provisions of section 211.1, chapter II, title 36, Code of Federal Regulations (Regulation A-9).

Boards constituted and elected under the provisions of Regulation G-7 shall consist of not less than three members. In addition and where the board represents an entire national forest, the State Game Commission, or the corresponding public body of the State in which the advisory board is located, may appoint a wildlife representative to advise on wildlife problems.

In order to attain full status as a recognized association the members must represent a majority of the grazing permittees on the area represented by the association. The members of a recognized advisory board must be elected by a majority of the voting grazing permittees on the area represented by the board, and must be permittees.

Recognized local associations and advisory boards and forestwide advisory boards will meet upon call of the chairman or upon call of the local forest officer. The local forest officer will obtain and carefully consider the suggestions and recommendations submitted by these boards regarding current grazing programs or proposed policy changes. These advisory boards also will be given the opportunity to review any matters affecting the interests of one or more users of national-forest range, upon request of the individual or individuals affected.

Duly recognized permittee advisory boards may consider grazing complaints and appeals and make recommendations thereon: *Provided*, That in appeal cases the procedure under section 211.2, chapter II, title 36, Code of Federal Regulations (Regulation A-10) may be followed if preferred by the appellant.

Local livestock associations representing a majority of permittees of a subdivision of a national forest may recommend to the forest supervisor special rules to obtain improved range-management practices upon the subdivision of the national forest represented by the association. Such rules when issued by the forest supervisor and made a part of the permits shall be binding upon all permittees using the range for which the rule was made.

COOPERATION—AUTHORITY UNDER REGULATION G-8

Secretary's Regulation G-8: Cooperation in the Enforcement of Sanitation, Quarantine, and Local Laws (36 C.F.R. 231.8).

Forest officers will cooperate with State, county, and Federal officers in the enforcement of all laws and regulations relating to livestock.

The Chief of the Forest Service may require:

(a) Compliance with livestock quarantine regulations and such other sanitary measures as he may deem necessary to prevent nuisances and insure proper sanitary conditions on the national forest.

(b) Owners of all livestock grazed under permit, or allowed to cross any national forest, to comply with the local livestock laws of the State in which the forest is located.

RANGE IMPROVEMENTS

Secretary's Regulation G-9: Range Improvements (36 C.F.R. 231.9).

(a) Special-use permits must be obtained or cooperative agreements entered into with the Forest Service in connection with the construction of all range improvements on national-forest land by individuals or agencies other than the Forest Service. In each case, a clause in the permit will clearly state whether title will vest in the Government or be retained by the permittee. Title to structural improvements (water tanks and troughs, cattle guards, fences, etc.) built under special-use permit may be retained by the permittee. However, where such improvements are constructed under a cooperative arrangement in which the Government bears a part of the costs, title thereto will vest in the United States. The construction of nonstructural improvements (driveways, trails, roads, etc.) or performance of range-improvement practices (reseeding, eradication of poisonous plants, etc.) on the national forest by a permittee shall not confer on the permittee the exclusive right to use the improvement or the land on which such practices were carried on. Grazing fees will not be adjusted to compensate permittees for the construction of range improvements or performance of range-conservation practices.

(b) The Forest Service is authorized to expend funds appropriated pursuant to section 12 of the act of April 24, 1950 (P.L. 478), for any and all of the purposes enumerated therein, such authority to be exercised by the Chief thereof and such officers and employees as he may designate. When the appropriation for any fiscal year pursuant to said section 12 is less than the total amount authorized, the Forest Service will prorate such appropriation to all national forests within the purview of that section. There shall not be allotted to any forest an amount in excess of the amount determined on the basis of animal months as provided in said section, nor in excess of the grazing receipts from said forest for the fiscal year from the receipts of which the funds were appropriated.

COOPERATION—AUTHORITY UNDER REGULATION G-10

Secretary's Regulation G-10: Local Livestock Advisory Boards (36 C.F.R. 231.10).

(a) *Functions Delegated to Forest Service.* The authorities, powers, functions, and duties vested in the Secretary of Agriculture by section 18 of the act of April 24, 1950 (Public Law 478, 81st Cong., 2d Sess.), are being delegated to the Forest Service to be exercised by the Chief thereof and such officers and employees as he may designate. The Chief and his designees are being authorized and directed to issue such instructions to the officers and employees of the Forest Service with respect to local advisory boards as may be necessary to carry out this regulation and to deal with such local advisory boards.

(b) *Petitions for Local Advisory Boards.* A majority of the grazing permittees of any national forest or administrative subdivision thereof may file with the forest supervisor a petition that a local advisory board, as provided for in section 18 of the act of April 24, 1950 (Public Law 478, 81st Cong., 2d Sess.), be constituted and elected to function with respect to the management and administration of the grazing resource of such national forest or administrative

subdivision thereof and on behalf of the grazing permittees thereof. Such petitions shall set forth:

- (1) The area for which the local advisory board is desired;
- (2) The number of members (not less than 3 nor more than 12) of which the petitioners desire that the local advisory board shall consist;
- (3) Such other information as the petitioners desire to have considered in connection with the constituting and electing of the local advisory board which may include an expression of the desires of the petitioners (i) as to whether the several members of the board should be elected from and within various zones of the national forest or administrative subdivision thereof with respect to which the board is to be established, or whether such members should be elected from such national forest or administrative subdivision thereof as a whole; (ii) as to whether the several members of the board should be elected from and by the different kinds of grazing permittees; and (iii) as to the manner in which the election of the members of the board shall be held; that is, by a vote at an assembly of the permittees, by ballot at various polling places, or otherwise.

(c) *Constituting and Electing Local Advisory Board.*

(1) Upon receipt of a petition pursuant to the provisions of paragraph (b) of this section the forest supervisor shall examine the petition and determine the validity of the signatures thereon and whether or not a majority of the grazing permittees of the national forest or administrative subdivision thereof covered by the petition has signed the same. If a majority of such grazing permittees has not signed the petition the forest supervisor shall reject it. If a majority of such grazing permittees has signed the petition the forest supervisor shall determine, if the petition covers less than a national forest, whether or not the area covered thereby constitutes a feasible administrative subdivision of the national forest, taking into consideration the size and location of the area, the number of grazing permittees thereon, the number and kind of livestock grazing thereon, and such other factors as he may deem appropriate. If the petition covers less than a national forest, and if the forest supervisor determines that the area covered thereby is a feasible administrative subdivision of the national forest or if the petition covers a national forest, the forest supervisor shall determine:

(i) The number (not less than 3 nor more than 12) of members which the local advisory board shall consist of, taking into consideration the desires of the grazing permittees as expressed in the petition and as otherwise ascertained by the forest supervisor, the size of the area for which the board is to be constituted, the number of permittees thereon, the number and kind of livestock grazed thereon, and such other factors as he may deem appropriate;

(ii) Whether the members of the board shall be elected from and within various zones of the area for which the board is to be established or from the area as a whole, and whether the members of the board shall be elected to represent various interests of the grazing permittees, taking into consideration the desires of the permittees, as expressed in the petition and as otherwise ascertained by the forest supervisor, the size, location, and dispersal of the area for which the board is to be constituted, the number and dispersal of the grazing permittees on such area, the number and kind of livestock grazed thereon, and such other information as he may deem appropriate;

(iii) The manner in which the members of the local advisory board are to be nominated and elected, taking into consideration the desires of the grazing permittees of the area for which the board is to be constituted as expressed in the petition and as otherwise ascertained by the forest supervisor, the number of members of which the board is to consist, the number and places of residence of the grazing permittees on such area, and such other factors as he may deem appropriate.

(2) Such determinations shall be announced to the grazing permittees on the area for which the local advisory board is to be constituted and the election of the members of the board shall be called within 60 days from the date the petition is received by the forest supervisor: *Provided*, That if nominations are provided for in advance of the date of the election such nominations shall be made and announced at least 10 days prior to the date of the election. Grazing permittees of the area for which the board is to be constituted shall be eligible to vote in the election. All persons nominated and elected as members of the local advisory board shall be grazing permittees in the area for which such board is constituted, except that a wildlife representative may be appointed as a member of such board by the State Game Commission or the corresponding public body of the State in which the advisory board is located to advise on wildlife problems, but such representative shall not be a voting member of the board.

(3) The forest supervisor or his designee shall ascertain and announce the results of the election of the members of the local advisory board.

(4) Each elected member of the board and the appointed wildlife representative shall hold office for a term of 3 years or until his successor has been elected and qualified: *Provided, however*, That grazing permittees elected members of the board at the first election shall be divided as evenly as may be into three groups, by the forest supervisor, one group to hold office 1 year, one group to hold office 2 years, and one group to hold office 3 years. The members to be assigned to each group shall be determined by lot. Thereafter each newly elected member will serve 3 years. Vacancies shall be filled for an unexpired term. The election of members to fill unexpired terms or for succeeding full terms shall be in same manner in which the original members of the board were elected, unless the forest supervisor, in announcing any such election, shall, after consideration by him of any changes in circumstances or other factors as may have occurred, provide for a different manner.

(5) A member of the local advisory board shall not receive from the Federal Government any compensation for his services or expenses incurred in the discharge of his duties.

(6) The members of the board shall designate a chairman and secretary and may, from time to time, change such designations.

(7) The board shall meet at least annually, with quorum present, and at such time or times as its members may determine or on call of the chairman thereof or the forest supervisor or his designee.

(8) The board, in its discretion, may, with the concurrence of the forest supervisor, and shall, upon a petition signed by two-thirds of the grazing permittees of the area which the board represents, remove from office any board member for failure to perform his duties as a board member.

(9) Any board may be dissolved by a two-thirds majority vote of the qualified grazing permittees of the area which the board rep-

resents by using the same procedure of petition and election that was used when the board was originally constituted and elected. (16 C.F.R. 3533-34, Apr. 25, 1951.)

RANGE IMPROVEMENTS ON NON-NATIONAL-FOREST LANDS

Granger-Thye Act, Section 11, is quoted in full as follows:

Whenever such action is deemed to be in the public interest, the Secretary of Agriculture is authorized to pay from any appropriation available for the protection and management of the national forests all or any part of the cost of leasing, seeding, and protective fencing of public range land (other than national-forest land) and privately owned land intermingled with or adjacent to national forest or other land administered by the Forest Service, if the use of the land to be seeded is controlled by the Forest Service under a lease or agreement which in the judgment of the Chief of the Forest Service gives the Forest Service control over the land for a sufficient period to justify such expenditures: *Provided*, That payment may not be made under authority of this section for the seeding of more than 1,000 acres in any one private ownership: *Provided further*, That payment may not be made under authority of this section for the seeding of more than 25,000 acres in any one fiscal year: *Provided further*, That the period of any lease under this authority may not exceed 20 years.

Granger-Thye Act, Section 18 is quoted in full as follows:

Sec. 18(a)(1) To provide national forest grazing permittees means for the expression of their recommendations concerning the management and administration of national forest grazing lands, a local advisory board shall be constituted and elected as hereinafter provided for each national forest or administrative subdivision thereof whenever a majority of the grazing permittees of such national forest or administrative subdivision so petitions the Secretary of Agriculture. Each elected local advisory board existing for such purpose at the time of the enactment of this act, and recognized as such by the Department of Agriculture, shall continue to be the local advisory board for the unit or area it represents, until replaced by a local advisory board or boards constituted and elected as hereinafter provided.

(2) Each such local advisory board shall be constituted and elected under rules and regulations, consistent herewith, now or hereafter approved by the Secretary of Agriculture, and shall be recognized by him as representing the grazing permittees of the national forest or administrative subdivision thereof for which such local advisory board has been constituted and elected.

(3) Each such local advisory board shall consist of not less than 3 nor more than 12 members, who shall be national forest grazing permittees in the area for which such board is constituted, elected, and recognized. In addition, a wildlife representative may be appointed as a member of each such board by the State Game Commission, or the corresponding public body of the State in which the advisory board is located, to advise on wildlife problems.

(4) Each such local advisory board shall meet at least once annually, at a time to be fixed by such board, and at such other time or times as its members may determine, or on the call of the chairman thereof or of the Secretary of Agriculture or his authorized representative.

(b) Upon the request of any party affected thereby, the Secretary of Agriculture, or his duly authorized representative, shall refer to the appropriate local advisory board for its advice and recommendations any matter pertaining to (1) the modification of the terms, or the denial of a renewal of, or a reduction in, a grazing permit, or (2) the establishment or modification of an individual or community allotment. In the event the Secretary of Agriculture, or his duly authorized representative, shall overrule, disregard, or modify any such recommendations, he, or such representative, shall furnish in writing to the local advisory board his reasons for such action.

(c) (1) At least 30 days prior to the issuance by the Secretary of Agriculture of any regulation under this act or otherwise, with respect to the administration of grazing on national forest lands, or of amendments or additions to, or modifications in, any such regulation, which in his judgment would substantially modify existing policy with respect to grazing in national forests, or which would materially affect preferences of permittees in the area involved, the local advisory board for each area that will be affected thereby shall be notified of the intention to take such action. If as a result of this notice the Secretary of Agriculture shall receive any recommendation respecting the issuance of the proposed regulation and shall overrule, disregard, or modify any such regulations, he or his representative shall furnish in writing to the local advisory board his reasons for such action.

(2) Any such local advisory board may at any time recommend to the Secretary of Agriculture, or his representative, the issuance of regulations or instructions relating to the use of national forest lands, seasons of use, grazing capacity of such lands, and any other matters affecting the administration of grazing in the area represented by such board.

APPEALS FROM ADMINISTRATIVE ACTION

Reg. A-10. Appeals From Administrative Action.

(a) (1) Any person having a contractual relationship with the Forest Service (other than one relating to the construction, alteration, or repair of public buildings or works, or to the purchase of administrative supplies, equipment, materials, or services), aggrieved by any administrative action or decision of an officer of the Forest Service relating thereto, may file with such officer a written request for reconsideration thereof, or written notice of appeal therefrom; except that no request for reconsideration or appeal can be taken where the relief appellant seeks his reformation of a contract or monetary damages or where the jurisdiction of another Government agency over the subject matter of such request or appeal supersedes that of this Department. Such actions or decisions shall be final unless requests for reconsideration thereof, or notice of appeal therefrom, is filed within 30 days from receipt of notice of the action or decision. Unless the written notice of appeal is accompanied by a showing of an acceptable reason for allowing a longer time for preparation, it shall be accompanied by a statement setting forth in detail the reasons why the action or decision appealed from is contrary to, or in conflict with, the facts, the law, or the regulations of the Secretary, together with any documents supporting

the appellant's position. Upon receipt of such statement, the officer shall prepare his own statement reviewing the matter and presenting the facts and considerations upon which his action or decision was based. The two statements, together with all papers comprising the record in the matter, shall then be transmitted to the reviewing officer. The reviewing officer will be the immediate superior of the officer whose action or decision is appealed, for example, in the following order: Forest supervisor, regional forester, Chief of the Forest Service, and Secretary of Agriculture. Except as provided in subparagraphs (2), (3), (4), and (5) of this paragraph, the reviewing officer will consider the matter and advise both the subordinate officer and the appellant of his decision on the basis of the statements and record submitted to him: *Provided*, That upon the written request of the appellant made within 15 days after the filing of his statement, the reviewing officer will afford the appellant the opportunity to present his views orally: *Provided further*, That if the reviewing officer considers the statements and records inadequate to support a proper decision, he may provide for the production of such additional evidence and information as may be appropriate or he may remand the matter for further consideration by the officer from whom the appeal was taken.

(2) When an appeal is to the Chief of the Forest Service from an action or decision of the regional forester or comparable officer the procedure and review will be in accordance with this paragraph. If the appellant wishes the review by the Chief to be on the statements and records and in the manner prescribed in subparagraph (1) of this section, the notice of appeal and accompanying statement of reasons shall be filed with the regional forester or comparable officer within 30 days from receipt of notice of the action or decision. If the appellant wishes a public hearing to present evidence on an issue of fact, the notice of appeal in triplicate shall be filed with the Hearing Clerk, United States Department of Agriculture, Washington 25, D.C., within 30 days from receipt of notice of the action or decision, and, unless the notice of appeal is accompanied by a showing of an acceptable reason for allowing a longer time for preparation of the petition, it shall be accompanied by a petition in triplicate setting forth (i) the reasons why the action or decision appealed from is contrary to, or in conflict with, the facts, the law, or the regulations of the Secretary and (ii) the relief requested. The Hearing Clerk of the Department will docket the case and serve one copy of the notice of appeal and/or petition on the regional forester or comparable officer, who shall within 30 days from receipt of the petition file in triplicate a motion, answer or other responsive pleading with the Hearing Clerk, who will serve a copy of such pleading on the appellant. When all pleadings have been filed the Hearing Clerk will refer the docket to the Chief Hearing Examiner. The Chief Hearing Examiner will designate a hearing examiner to act on preliminary matters to fix the time and place for a hearing, and to conduct the hearing, administer oaths and affirmations, and do all acts and take all measures necessary for the maintenance of order at the hearing, and to assure that all parties are afforded a full and complete hearing. The hearing examiner will require the testimony of witnesses to be under oath or affirmation and subject to cross-examination. He will receive only evidence which is germane

to the issue involved and shall exclude evidence which is immaterial, irrelevant, or unduly repetitious or which is not the sort upon which responsible persons are accustomed to rely. Where evidence is excluded the party affected may introduce in the record an offer of proof and the objecting party may introduce an offer of proof in rebuttal. At the close of the hearing, the hearing examiner shall specify a time for the filing of briefs. All papers and documents filed in the proceeding shall be filed in triplicate, either with the hearing examiner, if filed during the hearing, or with the Hearing Clerk, if filed at other times, who shall serve copies thereof by mail or in person upon the opposite party or his attorney or agent of record. As soon as the time for the filing of briefs has expired, the Hearing Clerk shall transmit the entire record to the Chief of the Forest Service. The Chief of the Forest Service will render a decision based exclusively on said record, and file his decision with the Hearing Clerk, who will retain one signed copy, serve one signed copy on the appellant, and serve a copy on the subordinate Forest Service officer: *Provided*, That if the Chief of the Forest Service determines that the record is inadequate to support a proper decision, he may order a further hearing.

(3) When appeal is to the Secretary from a decision of the Chief of the Forest Service on an appeal from an action or decision of the regional forester or comparable officer, the procedure and review will be in accordance with this paragraph. If the Chief's decision was based on the record and statements, the appeal shall be in the manner prescribed in subparagraph (1) of this paragraph. If the Chief's decision was based on a hearing record, the appellant shall file notice of appeal and statement of reasons why the Chief's decision is in error within 30 days from receipt of notice of the decision with the Hearing Clerk, who will serve a copy of the statement of reasons on the Chief. Within 30 days thereafter the Chief will file with the Hearing Clerk a statement setting forth the facts and circumstances upon which his decision was based. Thereupon, the Hearing Clerk will forward the record and statements to the Secretary.

(4) When the appeal is to the Secretary from an initial action or decision of the Chief of the Forest Service or reconsideration thereof, the procedure and review will be in accordance with subparagraph (1) of this paragraph: *Provided*, That if the appellant wishes a public hearing to present evidence on a question of fact, before an appeal is taken to the Secretary the appellant shall file notice of appeal and petition with the Hearing Clerk in the manner prescribed in subparagraph (2) of this paragraph and the appeal shall be handled in the same manner as though it were an appeal to the Chief from an action or decision of the regional forester or comparable officer, and the decision of the Chief may be appealed in the manner prescribed in subparagraph (3) of this paragraph for appeals to the Secretary from a Chief's decision based on a hearing record.

(5) The decision of the Secretary on an appeal pending before him will be based solely on the record upon which the Chief's decision was based, together with the statement of the appellant accompanying his notice of appeal detailing the reasons he believes the Chief's decision to be in error and the statement of the Chief

setting forth the facts and considerations upon which his decision was based. In instances where the Secretary determines that the record is incomplete or insufficient, he will remand the matter to the Chief with appropriate instructions for further action. (25 F.R. 8379-8380, Sept. 1, 1960.)

(b) Any person aggrieved by any administrative action or decision of an officer of the Forest Service other than those relating to contractual relationships may file with such officer a written statement setting forth in detail the respects in which the action or decision complained of is contrary to, or in conflict with, the facts, the law, or the regulations of the Secretary. No complaint on such actions or decisions will be considered or reviewed unless it is filed with such officer within thirty (30) days after the date of the action or decision complained of. Upon receipt of such statement the officer shall prepare his own statement reviewing the matter and explaining his action or decision and the reasons therefor. All reviews of complaints arising under this paragraph shall be based on the files and documents existing at the time the initial decision was rendered, together with the statements filed as above provided, except that, until the matter has been reviewed and decided by the regional forester or comparable officer, the reviewing officer may, if he considers the statements and records inadequate to support a proper decision, provide for the production of such additional documents and information as may be appropriate. Any reviewing officer may, if he considers the statements and records inadequate to support a proper decision, remand the matter for further consideration by the officer from whom the appeal was taken. The reviewing officer will be the immediate superior of the officer whose action or decision is appealed, for example, in the following order: Forest supervisor, regional forester, Chief of the Forest Service, and the Secretary of Agriculture (22 F.R. 7681-7682, Sept. 27, 1957; 36 CFR 211.2).

GRAZING TRESPASS

Reg. T-6. Grazing Trespass: The following acts are prohibited on national forests or other land under Forest Service control:

(a) The grazing upon or driving across any national forest or other land under Forest Service control of any livestock without permit, except such livestock as are specifically exempted from permit by the regulations of the Secretary of Agriculture, or the grazing upon or driving across any national forest or other land under Forest Service control of any livestock in violation of the terms of a permit.

(b) The grazing of livestock upon national forest or other land under Forest Service control within an area closed to the grazing of that kind or class of livestock.

(c) The grazing of livestock by a permittee upon an area included in a permit and subsequently withdrawn from grazing use to protect it from damage or for any other reason of public necessity, after notice of withdrawal and amendment of the grazing permit have been received by the permittee.

(d) Allowing livestock not exempt from permit to drift onto and graze on a national forest or other land under Forest Service control without a permit.

(e) Violation of any of the terms of a grazing or crossing permit.

(f) Refusal to remove livestock upon instructions from an authorized forest officer when damage is being done to any resource or use value of the national forest or other land under control of the Forest Service by reason of improper handling of the livestock or for any other cause related to presence of the livestock. (27 F.R. 10322, Oct. 23, 1962.) (36 CFR 261.7.)

Reg. T-12. Impounding of Livestock.

(a) Livestock trespassing on national forests or on other land under Forest Service control, which are not removed therefrom within the prescribed period after giving or publishing a warning notice as provided in this regulation, may be impounded by a forest officer. Whenever such forest officer has definite knowledge of the kind or class of livestock that is in trespass, and knows the name and address of the owners, such impoundment may be effected at any time five days after the date that written notice of the trespass is mailed by registered mail or delivered to such owners, unless in the meantime the trespass has ceased.

(b) In the event that local forest officers do not have complete knowledge of the kind or class of livestock in trespass, or if the name and address of the owner thereof are unknown, impoundment may be effected at any time 15 days after the date a notice of intention to impound trespassing livestock is first published in a local newspaper and posted at the county courthouse and in one or more local post offices.

(c) Any unbranded livestock which are in trespass or any livestock bearing brands belonging to the owner of livestock previously found in trespass during the calendar year, which subsequent to notice and action under paragraph (a) or (b) of this section, are found in continuing or subsequent trespass, within 12 months after a general notice of intention to impound trespassing livestock is first published in the calendar year in a local newspaper and posted at the county courthouse and in one or more local post offices, may be impounded without further notice.

(d) No sale of impounded livestock shall be made until at least 5 days have elapsed after the date of impoundment. The owner may redeem the livestock within the 5-day period by submitting proof of ownership and paying for the value of the forage consumed during the trespass period and all expenses incurred by the United States in advertising, gathering, impounding, and feeding or pasturing them.

(e) If the livestock are not redeemed on or before the date fixed for their sale, they shall be sold at public sale to the highest bidder. If no bid is received, the livestock may, in the discretion of the responsible forest officer, be sold at private sale or be condemned and destroyed or otherwise disposed of. When livestock are sold pursuant to this regulation, the forest officer making the sale shall furnish the purchaser a bill of sale or other written instrument evidencing the sale. (36 CFR 261.13.) (27 F.R. 10322, Oct. 23, 1962.)

Reg. T-13. Elements of Damage in Livestock Trespasses.

In all livestock trespasses on the national forests or other land under Forest Service control, the value of the forage consumed will be computed at the daily, monthly, or yearly commercial rates prevailing in the locality for the kind or class of livestock found in trespass. (36 CFR 261.14.) (27 F.R. 10323, Oct. 23, 1962.)



